



POLICE DEPARTMENT

July 7, 2010

MEMORANDUM FOR: Police Commissioner

Re: Detective Kassim Williams
Tax Registry No. 918477
30 Precinct Detective Squad
Disciplinary Case No. 84681/08

Detective Noel Mendez
Tax Registry No. 912008
24 Precinct Detective Squad
Disciplinary Case No. 84682/08

The above-named members of the Department appeared before me on March 18, 2010, and March 22, 2010, charged with the following:

Disciplinary Case No. 84681/08

1. Said Detective Kassim Williams, assigned to the 30th Precinct Detective Squad, while on duty on May 20, 2007, while inside an apartment building located at 2000 Grand Concourse, Bronx County, did wrongfully abuse his authority as a member of the New York City Police Department, in that said Detective Williams entered and searched Apartment #2B of said building, without sufficient authority, in that said Detective Williams did not have the legally valid consent of the lessee, or emergency circumstances, to justify his entry to the apartment without a warrant.

P.G. 203-10, Page 1, Paragraph 4 – ABUSE OF AUTHORITY

Disciplinary Case No. 84682/08

1. Said Detective Noel Mendez, while assigned to the 30th Precinct Detective Squad, while on duty on May 20, 2007, while inside an apartment building located at 2000 Grand Concourse, Bronx County, did wrongfully abuse his authority as a member of the New York City Police Department, in that said Detective Mendez entered and searched Apartment #2B of said building, without sufficient authority, in that said Detective Mendez did not have the legally valid consent of the lessee, or emergency circumstances, to justify his entry to the apartment without a warrant. (*As amended*)

P.G. 203-10, Page 1, Paragraph 4 – ABUSE OF AUTHORITY

The Department was represented by Paul Gallagher, Esq., Department Advocate's Office, and the Respondents were represented by James Moschella, Esq.

The Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondents are found Not Guilty.

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is not disputed that on May 20, 2007, the Respondents, who were on duty, dressed in plainclothes, and assigned to the 30 Precinct Detective Squad, went to 2000 Grand Concourse, the Bronx. The Respondents went there because Respondent Williams was trying to arrest Jose Pena regarding an assault complaint and Respondent Williams knew that Pena's girlfriend Walkiria Luis (who is the mother of Pena's children) had resided in apartment 2B at 2000 Grand Concourse. The Respondents went there that particular day because May 20 was Walkiria Luis' birthday.

The Department's Case

The Department called Walkiria Luis and Police Officer Jessica Meza as witnesses.

Walkiria Luis

Walkiria Luis testified at this trial in Spanish which was converted into English by a certified translator. She presently works at the coat check counter at the Morocco nightclub. On May 20, 2007, at about 1:00 p.m., she walked home from a hair salon to 2000 Grand Concourse, the Bronx, where she resides in an apartment with her two children. When she arrived home, she found "two detectives" waiting in front of 2000 Grand Concourse. She was familiar with these two detectives, who she identified in the trial room as the Respondents, because they had come to 2000 Grand Concourse "various times" looking for Pena "because he had a fight." She testified that she was "tired of them" coming to her residence and that it seemed to her that they were treating her residence "like it was a public park." She "knew one was Williams and the other was Mendez."

Respondent Williams asked her, "Where is Jose Pena?" When she told them that Pena was not in apartment 2B, they both told her that they wanted to enter the apartment and look around to see if Pena was there. When she asked to see "a paper," they told her, "We don't need that. You can let us in." They told her that she had to let them enter the apartment and look around or she would be in trouble.

Luis called 911 and told the operator that "two detectives" one of whom was named "Williams" were at 2000 Grand Concourse. Uniformed officers in marked police cars soon appeared. Luis told the uniformed officers that the Respondents wanted to enter her apartment "without a paper." The uniformed officers told her that if she did not have anything to hide, she should let them enter. One of the officers was female who

spoke Spanish. This officer did not try to persuade her to allow the Respondents to enter the building. None of the uniformed officers told her that she was in trouble.

When she continued to tell the Respondents that she did not want to let them in, they began to converse with each other about her lack of cooperation and whether they should report her to the Administration for Children's Services (ACS). She heard one of them say to the other, "Let's call ACS."

Since they acted as if they were going to call ACS, Luis allowed the Respondents and the uniformed officers into the building and she walked them to apartment 2B where she unlocked the door to the apartment and opened it. She testified that she only did this "in order for them not to knock it down" because they had told her that if she did not open the door they would knock the door down. Luis told the Respondents in English that "the door is open but I don't want you to go inside, you do not have my permission," and that "if you go inside it's just for your own risk." The Respondents entered and looked around inside the rooms in the apartment. Then the Respondents and the uniformed officers left. After they left, Luis called 311 and was connected to the Civilian Complaint Review Board (CCRB) where she filed a complaint.

On cross-examination, Luis testified that she understands English when it is spoken to her but that she "can only speak a little" English. When she spoke to the Respondents, she tried to speak in English. She understood that Pena was wanted by the police. He had visited his children inside apartment 2B, but he did not have a door key to the apartment. She confirmed that the Respondents had come to 2000 Grand Concourse twice prior to May 20, 2007, looking for Pena. The first time, Respondent Williams

came alone and left when she told him that Pena was not there. The second time both Respondents came and they entered and searched apartment 2B “without a paper.”

Luis was confronted with statements she made on July 13, 2007, at her CCRB interview. She told her CCRB interviewer that she was “coming down with my kid” and that she was “on my way out” when she “saw the detectives.” Luis also stated to CCRB that when uniformed officers arrived at 2000 Grand Concourse, the uniformed officers told her “the same thing” that the detectives had told her, that she had to open her door or she would be in trouble. None of the uniformed officers told her that they had responded to 2000 Grand Concourse because they had received a call that men were impersonating police officers.

Police Officer Jessica Meza

Police Officer Jessica Meza, assigned to the 46 Precinct, testified that she was on duty, in uniform, performing patrol duties, on May 20, 2007. She stated that she did not have her activity log covering May 20, 2007, with her because when she was notified to appear to testify at this trial, she was not told to bring her activity log with her to the trial room. When she was interviewed regarding this incident at CCRB on August 27, 2007 [Department’s Exhibit (DX) 1] she used her May 20, 2007, activity log entry to refresh her recollection. She acknowledged that her memory of this brief, non-arrest event was better in August, 2007, than it is now. Meza told CCRB that she and her partner, Officer Federlen, had responded to 2000 Grand Concourse because they had received a radio transmission that “some people impersonating a cop” were outside 2000 Grand Concourse, apartment 2B. When they arrived there, they were met by two detectives,

whose names and assigned command she could not recall. The detectives were trying to get into the building, but Luis was not allowing them to enter. Since Luis spoke Spanish and Meza speaks Spanish, she acted as translator. The two detectives stated that “they had like a warrant, her husband or something like that” and “they were asking her if she knew where he was” and whether he was “in the apartment.” Meza had no recollection of having heard the detectives talk about contacting ACS. Meza told CCRB that she heard Luis tell the Respondents that she was not lying that Pena was not hiding in apartment 2B and that they could “go upstairs and see for yourself.” Luis brought the detectives and the officers to an apartment where she “opened the door” and “let everybody in.” Meza stood by the door to the apartment when Luis opened it and the detectives entered. The apartment emitted a bad smell. She never heard Luis say that she was opening the door against her will.

The Respondents’ Case

The Respondents called Police Officer Thomas Kurilenko as a witness and testified in their own behalf.

Police Officer Thomas Kurilenko

Police Officer Thomas Kurilenko, assigned to the 46 Precinct, recalled that he and his partner, Officer Thomas, were on duty, in uniform, performing patrol duties, on May 20, 2007, and that they drove to 2000 Grand Concourse in response to a radio call that someone there was impersonating a police officer. Upon their arrival there, they encountered two detectives. He identified the Respondents as the two detectives he met

in front of 2000 Grand Concourse. He had never met them before. He did not have any conversation with the Hispanic female. The detectives were speaking to in a very calm manner. The detectives were not yelling at her and they did not appear to be upset with her. He did not see either detective using a telephone. At some point, they all entered the building. The Hispanic female opened a door and the detectives entered an apartment but he stayed outside. Kurilenko testified that when the Hispanic female opened the door he had no recollection of hearing her say that she was opening the door without her consent for the detectives to enter the apartment.

Respondent Williams

Respondent Williams, who in February, 2010, was approved for a Department medical disability pension, testified that for two years he had been trying to arrest Jose Pena regarding an assault complaint in which the victim suffered eight stab wounds. Pena also had an open parole violation warrant. Pena had been avoiding him. He had come to 2000 Grand Concourse about 15 times before looking for Pena. On two or three of those occasions, Luis was there and he spoke to her.

On May 20, 2007, he and Mendez were standing at the front door of the building ringing the buzzer for apartment 2B when he saw Luis coming out of the subway. Luis spotted them and he could tell by her expression that she recognized him. She walked around the corner of 2000 Grand Concourse out of their sight. They were monitoring their Department radio and they heard a radio transmission that someone at 2000 Grand Concourse was impersonating a police officer.

Uniformed officers assigned to patrol arrived at 2000 Grand Concourse. Luis came to the front of the building. The officers approached Luis and told her that they were responding to the radio call that someone there was impersonating a police officer. Williams asked her if she had called 911 and reported that he was impersonating a police officer. She admitted that she had called 911. Williams asked her why she had done that when she knew who he was, but she did not respond. He and Mendez never mentioned ACS.

Williams asked Luis if Pena was upstairs. She responded that he was not in the building. She told them, "I'm not lying. You can come upstairs. I will show you he is not upstairs...you don't believe me, come on, let's go see. He is not in there." She then unlocked the front door and they all entered and walked up the stairs to the second floor. She then unlocked and opened the apartment door and stood aside. Williams and Mendez walked inside and looked into each of the rooms. No one was there and they then left.

Respondent Mendez

With regard to the events of May 20, 2007, Respondent Mendez testified in a manner consistent with the testimony of his partner. He had come to 2000 Grand Concourse once before with his partner looking for Pena. They had spoken to Luis at the door to her apartment. Officer Meza spoke to Luis in Spanish. They never threatened to call ACS and Luis never said she was opening the door but that it was without her consent.

FINDINGS AND ANALYSIS

It is charged that the Respondents abused their authority by entering and searching apartment 2B at 2000 Grand Concourse, the Bronx, because they did not have the legally valid consent of the lessee, or emergency circumstances, to justify their entry into the apartment without a warrant. It is not disputed that the Respondents entered apartment 2B and that no emergency circumstance existed which would justify the Respondents' entry into the apartment without a warrant. Rather, the Respondents contended that Walkiria Luis had consented to their request that they be allowed to enter the apartment and look around to see if Jose Pena was there.

Luis' claim that she never consented to the Respondents' request that they be allowed to enter the apartment and look around must be examined in light of a number of factors. First, the record shows that she had a motive to want to make trouble for the Respondents, because she wanted them to stop coming to 2000 Grand Concourse to look for Pena, and that she called 911 for the purpose of making trouble for the Respondents. Luis acknowledged that because the Respondents had come to 2000 Grand Concourse looking for Pena on at least three occasions prior to May 20, 2007, she had grown "tired of them" coming there and that she felt that they were coming there so often they were acting "like it was a public park." Even though Luis knew the Respondents were detectives and knew their last names, the record establishes that she falsely told the 911 operator that she believed that the Respondents were impersonating police officers. Kurilenko and Meza (DX 1 p. 4) both testified they had responded to 2000 Grand Concourse because they had received a radio transmission that Luis had alleged that people who were impersonating police officers were in front of 2000 Grand Concourse.

Their testimony is corroborated by the Incident Record offered in evidence by the Respondents (RX A). Based on this testimony and evidence, I find that Luis intentionally falsely reported to the 911 operator that the Respondents were police impersonators and I find that Luis lied at this trial when she asserted that she told the 911 operator that detectives, including one named Williams, were at 2000 Grand Concourse.

Also, Luis offered testimony at this trial that was inconsistent with statements she made to her CCRB interviewer. At this trial, Luis testified that she was returning home from a hair salon when she spotted the Respondent in front of her residence. This testimony is inconsistent with Luis' statement to CCRB that she was coming down the stairs with one of her children on her way out of her residence when she saw the Respondents. Also, Luis testified that the female uniformed officer did not try to persuade her to open her door and that none of the uniformed officers told her that she was in trouble. This testimony is inconsistent with Luis' statement to CCRB that when the uniformed officers arrived they told her the same thing the detectives had told her: that she had to open her door or she would be in trouble.


Finally, Luis' claims that the Respondents threatened to notify ACS regarding her children and that she told the Respondents that she was opening the door to apartment 2B against her will and without her consent are not supported by any other testimony in the record. Kurilenko testified that when Luis opened the door he had recollection of hearing her say that she was opening the door without her consent (Transcript p. 80) and Meza told CCRB (DX 1 p. 11) that she never heard the Respondents mention contacting ACS and she never heard Luis say that she was opening the door against her will.


Based on the above, I find that Luis' testimony cannot be relied upon and that her claim that she never voluntarily consented to the Respondents' request that they be permitted to enter apartment 2B and look around does not constitute credible evidence.

I find that the record also shows that the Respondents had good reason to believe that Luis had consented to allowing them to enter apartment 2B and look around. Meza told CCRB (DX 1 p. 9) that she heard Luis tell the Respondents that her claim that Pena was not hiding in apartment 2B was not a lie and that they could "go upstairs and see for yourself" at which point Luis "opened the door and she let everybody in." Also, based on Luis' testimony regarding her physical actions at the threshold of the door to apartment 2B and what she said to the Respondents in her broken English, the Respondents could reasonably have interpreted the combination of Luis' actions and words as constituting authorization to enter the apartment. Luis acknowledged that she unlocked the door to the apartment and that she opened the door and that she told the Respondents in broken English, "If you go inside it's just for your own risk." The Respondents could reasonably have interpreted this remark to mean that they could enter the apartment but that they should be careful because she would not take responsibility for anything that might happen to them while they were inside the apartment.

Since the Department has not met its burden of presenting evidence which proves these charges by a preponderance of the credible evidence, the Respondents are found Not Guilty.

Respectfully submitted,

APPROVED
NOV 15 2010

RAYMOND W. KELLY
POLICE COMMISSIONER


Robert W. Vinal
Assistant Deputy Commissioner - Trials

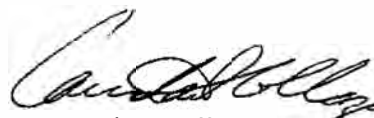
**POLICE DEPARTMENT
CITY OF NEW YORK**

July 6, 2010

From: Case Coordinator, Deputy Commissioner – Trials
To: Police Commissioner
Subject: **NO FOGEL RESPONSE FROM RESPONDENT'S ATTORNEY**

1. A draft copy of the proposed decision and recommendation in regards to Detective Kassim Williams, Disciplinary Case No. 84681/08 and Detective Noel Mendez, Disciplinary Case No. 84682/08 was sent to the Respondents attorney with comments due on July 5, 2010. The Respondent's attorney has indicated that no Fogel response will be forthcoming.

2. For your **INFORMATION**.



Caridad Collazo
Police Officer